83

Supreme Court, U.S.
(2) FILED

071018 OCT 9 - 2007

OFFICE OF THE CLERK

NO._____

IN THE
SUPREME COURT OF THE UNITED STATES
RONALD GILGALLON, EILEEN GILGALLON
SHAWN GILGALLON – PETITIONER
V.
THE COUNTY OF HUDSON, ROBERT JANIZEWSKI, FRANCIS DELEONARDIS, MARK MORCHEL, MICHAEL CIFELLI, THE BOARD OF CHOSEN FREEHOLDERS, NEIL CARROL, VINCENT ASCOLESE, NEPTALIA CRUZ, WILLIAM BRAKER, NIDIA DAVILA-COLON, WILLIAM O'DEA, ALBERT CIFELLI, SILVERIO VEGA, MAURICE FITZGIBBONS, CONNELL FOLEY LLP, JOHN P. LACEY, LABOR MANAGEMENT CONCEPTS INC., JOHN MONROE, STATE OF NEW JERSEY, JOSEPH TRAPP, and ABC CORPORATIONS 1-10 (a fictitious corporation) and JOHN and MARY DOES 1-10 (fictitious persons)

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY AND THE COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

RONALD GILGALLON
206 7TH STREET
HARRISON, NEW JERSEY 07029
570-828-7978

APPENDIX

EXHIBITS

A. OPINION JULY 20, 2007	1, 2
B. OPINION JUNE 19, 2007	3 - 7
C. OPINION JULY 10, 2006	7-17
D. OPINION FEBRUARY 23, 2006	18-24
E. OPINION JANUARY 4, 2006	25-36
F. OPINION JANUARY 31, 2001	36-49

EXHIBIT A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 06-1819

EILEEN GILGALLON;
RONALD GILGALLON;
SHAWN GILGALLON
V.
COUNTY OF HUDSON; ROBERT JANIZEWSKI; FRANCIS DELEONARDIS; MARK MORCHEL; MICHAEL CIFELLI; BOARD OF CHOSEN FREEHOLDERS; NEIL CARROLL; VINCENT ASCOLESE; NEPTALI CRUZ; WILLIAM BRAKER; NIDIA DAVILLA-COLON; WILLIAM O'DEA;
ALBERT CIFELLI; SILVERIO VEGA; MAURICE FITZGIBBONS; CONNELL FOLEY LLP; JOHN P. LACEY; JOHN MONROE; STATE OF NEW JERSEY; JOSEPH TRAPP; ABC CORPORATIONS 1-10 (a fictitious corporation); JOHN AND MARY DOES 1-10
(a fictitious corporation)
Ronald Gilgallon
*Eileen Gilgallon
Appellants
See Clerk's Order dated 4/27/06

On Appeal from the United States District Court
For the District of New Jersey
(D.C. No. 02-cv-05948)
District Judge: Honorable Dennis M. Cavanaugh

Present: SCIRICA, Chief Judge, SLOVITER, McKEE, RENDEL, BARRY, AMBRO, FUENTES, SMITH, FISHER, CHAGARES, JORDAN, HARDIMAN AND ROTH,* Circuit Judges

---

SUR PETITION FOR REHEARING WITH SUGGESTION FOR REHEARING *EN BANC*

The petition for rehearing en banc filed by Appellants having been submitted to the judges who participated in the decision of this Court, and to all other available circuit judges in active service, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court *en banc*, the petition for rehearing en banc is DENIED.

BY THE COURT:

/s/ Maryanne Trump Barry
Circuit Judge

Dated: July 20,2007

CH/cc: Ronald Gilgallon
Eileen Gilgallon
Michael A. Cifelli, Esq.
Edward Florio, Esq.

Judge Roth's vote is limited to panel rehearing only.

Exhibit B

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 06-1819

EILEEN GILGALLON;
RONALD GILGALLON;
SHAWN GILGALLON
V.
COUNTY OF HUDSON; ROBERT JANIZEWSKI; FRANCIS DELEONARDIS; MARK MORCHEL; MICHAEL CIFELLI; BOARD OF CHOSEN FREEHOLDERS; NEIL CARROLL; VINCENT ASCOLESE; NEPTALI CRUZ; WILLIAM BRAKER; NIDIA DAVILLA-COLON; WILLIAM O'DEA;
ALBERT CIFELLI; SILVERIO VEGA; MAURICE FITZGIBBONS; CONNELL FOLEY LLP; JOHN P. LACEY; JOHN MONROE; STATE OF NEW JERSEY; JOSEPH TRAPP; ABC CORPORATIONS 1-10 (a fictitious corporation); JOHN AND MARY DOES 1-10 (a fictitious corporation)
RONALD GILGALLON
*EILEEN GILGALLON,
Appellants
*See Clerk's Order dated 4/27/06.

On Appeal From the United States District Court
For the District of New Jersey
(D.C. Civ. No. 02-cv-05948)
District Judge: Honorable Dennis M. Cavanaugh

Submitted Under Third Circuit LAR 34.1(a)
January 5, 2007

BEFORE: BARRY, CHAGARES AND ROTH,
CIRCUIT JUDGES
(Filed: June 19, 2007)

OPINION

PER CURIAM

Pro se appellants Ronald and Eileen Gilgallon appeal the District Court's January 4, 2006 order enjoining them from pursuing litigation against the appellees in state court or any other court. Appellants also appeal the District Court's February 28, 2006 order denying their motion for reconsideration.

The lengthy procedural history of this case and the details of appellants' claims are well known to the parties, set forth in the District Court's thorough opinions, and need not be discussed at length. Briefly, the Gilgallons have filed repetitive and vexatious lawsuits in the state and federal courts for over ten years seeking to re-litigate issues that have been decided against them. We previously summarized this litigation in our opinion in Gilgallon v. Carroll, C.A. No. 05-2074, 2005 WL 2891686 (3d Cir. 2005).

After they were enjoined from litigating in federal court, the Gilgallons returned to state court and filed a complaint alleging malpractice against their former attorneys. They subsequently filed a second

amended complaint alleging claims against Hudson County Attorney Michael Dermody, who had been opposing counsel in the Gilgallon's first federal action. In Gilgallon v. Carroll, we affirmed the District Court's order enjoining the Gilgallons from litigating an action against Michael Dermody in state or federal court on the grounds that the injunction was necessary to protect and effectuate the District Court's prior judgments against the Gilgallons.

In a proposed third amended complaint in state court, the Gilgallons made allegations against the appellees. Appellees moved for an injunction barring the Gilgallons from proceeding in state court. By order entered January 4, 2006, the District Court enjoined the Gilgallons from pursuing the matter in state court against the appellees. The District Court denied the Gilgallons' motion for reconsideration, and the Gilgallons filed a timely notice of appeal.

We have jurisdiction under 28 U.S.C.& 1291. Our review of the District Court's authority to issue an injunction under the Anti-injunction Act is de novo. In re Diet Drugs, 369 293, 304 (3d Cir. 2004). We review the injunction for an abuse of discretion; legal issues are reviewed de novo, and factual issues are reviewed for clear error. Id.

We first note that the scope of the appeal encompasses only the District Court's January 4th, and February 28th orders. Subsequent to those orders, the Gilgallons attempted to file a fourth amended complaint in the state court. By order entered May 18th, the District Court issued a temporary restraining order staying the state court litigation and ordered the Gilgallons to show cause

why they should not be held in contempt. By order entered July 12th, the District Court held the Gilgallons in civil contempt. The Gilgallons filed motions in this Court to amend the appeal to include these orders.

A party may file an amended notice of appeal from an order disposing of a motion specified in Fed. R. App. P. 4(a)(4)(A). See Fed. R. App. P.4(a)(4)(B)(ii). The District Court's May 18th and July 12th orders do not fall within this rule. By order entered August 7, 2006, the Clerk denied the motions to amend the appeal. The Clerk noted that "[t]he Court will lack jurisdiction to consider the propriety of the new orders since they have not been appealed." The Gilgallons did not file notices of appeal in the District Court from the May or July orders.

On appeal, The Gilgallons focus on the District Court's May and June orders and the allegations in the fourth amended complaint in the state court. The Gilgallons also argue that the District Court's actions violated their right to due process. These arguments are meritless. The Gilgallons were ordered to show cause why they injunction should not issue, they submitted a brief in opposition, and a hearing was held. Thus, they were given notice and an opportunity to be heard before the District Court entered its January 4, 2006 order.

Besides generally stating that the January 4th order violates the Anti-Injunction Act, the Gilgallons do not challenge the District Court's decision. Because allegations against the appellees in the third emended complaint in the state court concern issues that have been decided against the Gilgallons in their District Court actions, the

District Court's order was necessary to protect and effectuate its prioe judgments. The District Court did not err in denying the motion for reconsideration. Therefore, we will affirm the District Court's judgment.

EXHIBIT C

NOT FOR PUBLICATION
UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

EILEEN GILGALLON, et al.,
Hon. Dennis M. Cavanaugh
Plaintiffs,
v.
OPINION
COUNTY OF HUDSON, et al.,
Civil Action No.02-CV-5948(DMC)
Defendants.

Dennis M. Cavanaugh, U.S.D.J.:

This matter comes before the Court upon an Order to cause filed by the County of Hudson, Robert Janiszewski. Francis DeLeonardis, Mark Morchel, and Micheal Cifelli (collectively "Defendants", for this court to stay the motions currently pending before the New Jersey Superior Court and hold Eileen Gilgallon, Ronald Gilgallon, and Shawn Gilgallon ("Plaintiffs") in both criminal and civil contempt and civil confinement for violating this court's January 4, 2006 order and opinion. Oral

Argument was heard regarding this matter on June 22, 2006, at 9:30 A.M. For the reasons set forth blow, The Court grants Defendants' application in part and denies it in part.

1. Background

The facts of this case were discussed in detail in the court's January 4, 2006 opinion. In the interest of judicial economy those facts will not be reiterated again today. On January 4, 2006, this court issued an opinion and order granting Defendants County of Hudson, Robert Janizewsky, Francis Deleonardis, Mark Morchel, Michael Cifelli, the Board of Chosen Freeholders, Neil Carrol, Vincent Ascolese, Neptalia Cruz, William Braker, Nidia Da Vilacolon, William O'Dea, Albert Cifelli, Silverio Vega, Maurice Fitzgibbons, Connell Foley LLP, John P. Lacey, Labor Management Concepts Incorporated, John Monroe, the State of New Jersey, Joseph Trapp, and ABC Corporations and John and Mary Does, Order to show Cause permanently enjoining Plaintiffs from filing any further amended complaints or motions relating to Plaintiffs' security contracts in State Court or any other Court. Plaintiffs filed a motion for reconsideration, which the Court denied on February 28, 2006.

On May 3, 2006, this Court entered an Opinion and Order, granting in part ad reserving in part, Defendants' motion for rule 11 sanctions against Plaintiffs. This Court granted Defendants' request for monetary sanctions and directed Defendants' to submit a certification of services for all counsel fees and costs, individually and severally, associated

with defendants' efforts in response to Plaintiffs' Third Amended Complaint. The Court reserved on the issue of civil confinement, which a court may order pursuant to Rule 4.1 (b) of the Federal Rules of Civil Procedure when a party is found to be in contempt, until Third Circuit issues a decision on Plaintiffs' appeal of this Court's January 4, 2006 Opinion and Order.

After the court issues an injunction on January 4, 2006, Defendants' filed a motion for summary judgment in State Court. Plaintiffs' requested an adjournment on that motion,
which was granted. Then, in or around May of 2006, Plaintiffs moved before the Superior Court of New Jersey, Law Division, Hudson County, for permission to file a Fourth Amended Complaint against Defendants. In response, Defendants filed an order to show cause before this court on May 18, 2006, seeking a temporary stay of the New Jersey Superior Court action and requesting Plaintiffs to show cause as to why they should not be held in contempt for violating this Court's January 4, 2006 Order. Defendants allege the Fourth Amended Complaint contains the same allegations included in the Third Amended Complaint, upon which this Court issued a permanent injunction. On June 9, 2006, the parties appeared before the Superior Court of New Jersey for oral argument on Plaintiffs' motion to stay the Order to Show Cause proceedings before this Court, Which Judge Antonin denied. During the hearing, Judge Antonin stated:
I think I made it clear that for the purposes of going forward and prosecuting your legal

malpractice case, yes, you would be able to get discovery from the County, from the various people you named, the order that I signed permitting depositions and production of document and all of that, were for the suit within a suit. Not for actual claims being prosecuted in this against the County of Hudson or any of the other people named. I didn't Think that was misunderstand. I thought it was clear. But it was misunderstood, I'm clarifying it. My order did not- because this is an argument in the County advanced vigorously when you first came before this Court for relief...they contended that that's what you were trying to do, that you were trying to do an end run around the federal court that that's not what you were doing, and you assured the court and argued against the defendants that you had to prove your...underlying claim in order to prevail in the malpractice case.

(Transcript of Oral Argument, Gilgallon, et, al. v. Shea, et. al. HUD-L-4228-03, (Oral Arg. Tr." 16:10-17:7).

On June 14, 2006, Plaintiffs submitted a letter addressed to this court stating they were "withdrawing the allegation against Hudson County contained in the fourth amended complaint under docket number L-4228-03." Plaintiffs failed to submit any additional evidence of withdrawing the Fourth Amended Complaint other then this letter. This court heard oral argument on June 22, 2006, on Defendants' OTSC to stay the motions pending before the New Jersey Superior Court and hold Plaintiffs in both criminal and civil contempt and civil confinement for violating this Court's

January 4, 2006 Order and Opinion. The Court reserved its decision at oral argument in order to consider Defendants' request and Plaintiffs' arguments more fully. The Court now issues this opinion.

II. Discussion

A. Civil and Criminal Contempt

Defendants argue the Court should find Plaintiffs guilty of both civil and criminal contempt for violating this Court's January 4, 2006 order. Although the distinctions between civil and criminal contempt are often difficult to discern, the two are not one and the same.

"Contempts are neither wholly civil nor altogether criminal. And it may not always be easy to classify a particular act as belonging to either one of these two classes. It may partake of the characteristics of both." Samuel Gompers v. Buck's Stove and Range Co., 221 U.S. 418, 441 (1911). Regardless of whether the proceedings are deemed civil or criminal, a party must be accused of violating a court order to conduct contempt proceedings. Id. The distinction between civil and criminal contempt lies in both the provable elements of the offense and the intended purpose of the Court's sanctions. McComb v. Jacksonville Paper Co., 336 U.S. 187 (1949).

If a Court wishes to hold a party in civil contempt, the punishment is remedial and for the benefit of the complainant. Gompers, 221 U.S. at 441. "Civil as distinguished from criminal contempt is a sanction to enforce compliance with an order of the

Court or to compensate for losses or damages sustained by reason of noncompliance." McComb, 336 U.S. at 190. Due to the fact that civil contempt sanctions are viewed as non-punitive and avoidable, fewer procedural protections are required when imposing civil sanctions than criminal contempt sanctions. Int'l Union, United Mine Workers of Am. V. Bagwell, 512 U.S. 821, 831 (1994). The Supreme Court has recognized that punishment by imprisonment may be remedial as well as punitive. Id. At 441-42. The Supreme Court of the United States has also found that civil contempt proceedings may result in both the imposition of a fine payable to the complainant and imprisonment for the party found in contempt. Id. At 442. In civil contempt proceedings, parties are usually imprisoned when they have refused to do an affirmative act required by a court order. Id. In these situations, imprisonment is not inflicted as a punishment, but is intended to be remedial by coercing the party to do what he or she has previously refused to do. Id. If the sentence is punitive to vindicate the authority of the court, it is considered a criminal contempt proceeding. Gompers 221 U.S. at 441.

B. Plaintiffs' Violation of this Courts January 4,2006 Order

On January 4, 2006, this Court issued an order and opinion enjoying Plaintiffs from pursing any further claims against Defendants arising from the denial of Plaintiffs' security guard contracts with the County of Hudson in the Superior Court of New

Jersey. As a result of this injunction, Defendants moved for summary judgment before Judge Antonin in State Court. Plaintiffs requested and were granted an adjournment and then sought permission to file a Fourth Amended Complaint. Defendants filed an Order to Show Cause in response to the Fourth Amended Complaint seeking civil and criminal sanctions against Plaintiffs for violating this Court's January 4, 2006 Order.

The Court Agrees with Defendants that Plaintiffs' proposed Fourth Amended Complaint violate this Court's January 4, 2006 Order. Previously, this Court entered an Order on June 2, 2004, which among other things, prohibited Plaintiffs from filing any more Complaints against Defendants before this Court arising from the denial of plaintiffs security guard contracts with the County of Hudson without first receiving permission from this court. In an attempt to circumvent this Court's June 2003 Order, which was affirmed by the Third Circuit on April 14, 2004, Plaintiffs attempted to file a Third Amended Complaint in State Court against Defendants again alleging claims arising from the denial of plaintiffs security contracts, without first seeking permission. Plaintiffs did so without seeking permission. In response, this court entered an order on January 4, 2006, enjoining Plaintiffs from pursuing any more claims against Defendants arising from the denial of plaintiffs' security guard contracts with the County of Hudson in any court, State of Federal. Plaintiffs again tried to

circumvent this Court's Order, by filing a Fourth Amended Complaint in State Court in May of 2006. Plaintiffs seek the same relief against Defendants in their Fourth Amended Complaint that Plaintiffs were barred from seeking when they filed their Third Amended Complaint. Specifically in the Third Court of the proposed Fourth Amended Complaint, Plaintiffs request "any and all damages that may have resulted from the prior litigations in civil action 00-591 and 02-5948...damages resulting from the misrepresentation of the taxpayers of Hudson County...damages to the Plaintiffs resulting from the dismissal of their claims in civil action 00-591 and 02-5948...and punitive, compensatory and nominal damages, interest, related costs and personal financial loss relating to this case." Plaintiffs requested identical relief in their Third Amended Complaint. The only difference between the Third and Fourth Amended Complaints is that Plaintiffs no longer ask the Court to investigate allegations of conspiracy, willful misrepresentation, and legal malpractice. Instead, Plaintiffs now seek an investigation into allegation of fraudulent concealment on the part of Defendants.

Plaintiffs assert they have uncovered new evidence during depositions of two member of the Board of Chosen Freeholders that have given rise to claims against Defendants for Fraudulent concealment. (Transcript of Order to Show Cause Hearing before Judge Cavanaugh on June 22, 2006, (OTSC Tr.") 20:5-7). However, Plaintiffs conducted these depositions prior to filing their Third Amended Complaint. (Id. At 28:22-25). All of

Plaintiffs' claims against Defendants regard to the security contracts have been considered by this Court and by the Applellate Division of the New Jersey Superior Court, District Judge Bassler, Magistrate Judge Hedges and District Judge Hayden. By raising the issue of "fraudulent concealment," Plaintiffs are once again attempting to circumvent this Court's orders. They are placing a new name on allegations they have previously raised. Furthermore, Judge Antonin recently noted during a motion hearing on June 9, 2006, that she had permitted Plaintiffs to obtain discovery from Defendants regarding their "suit within suit," but that she in no way had allowed Plaintiffs to file any claims against the County of Hudson, Robert Janiszewski, Francis DeLeonardis, Mark Morchel, and Micheal Cifelli. (Oral Argument Tr.16:10-17:7). This is exactly what Plaintiffs attempted to do with their proposed Their and Fourth Amended Complaints, which not only violates Judge Antonin's instruction but was also in violation of this Court's January 4, 2006 Order.

C. Plaintiffs Must be Held in Civil Contempt

Injunctions have been recognized as " extraordinary writs, enforceable by the power of contempt." Gunn v. Univ. to End the War in Vietnam, 399 U.S. 383, 388-89 (1970). Here the Court has found Plaintiffs to have violated the permanent injunction issued on January 4, 2006, enjoining them from pursuing this matter against Defendants in State Court. Due to the fact that Plaintiffs violated an injunction ordered by this Court, the Court has authority to hold them in

contempt. Plaintiffs were well aware of the Court's January 2006 Order when they filed their Fourth Amended Complaint. Due to the fact that the Court wishes to compensate defendants for the costs they incurred in response to Plaintiffs' Fourth Amended Complaint and wishes to deter Plaintiffs from any further violations of this Court's Order's, the Court holds Plaintiffs in civil rather than criminal contempt. Accordingly, Plaintiffs must pay a fine of $5000 to this court and reimburse Defendants all costs and fees associated with the Fourth Amended Complaint.

D. Plaintiffs' Withdraw of their Forth Amended Complaint

Prior to oral argument, this Court received a letter from Plaintiffs' on June 14, 2006, stating they were "withdrawing the allegations against Hudson County contained in the Forth Amended Complaint under docket number L-4228-03." Plaintiffs did not submit any additional evidence indication they had officially withdrawn their Forth Amended Complaint in State Court besides the letter addressed to this Court. Nothing in the letter indicated that anyone else had received a copy of this letter, At oral argument Plaintiffs announced they had filed a revised Fourth Amended Complaint withdrawing all references to the County of Hudson. (OTSC Tr. 4:23-25). It is not clear whether the allegations have been officially withdrawn in State Court because Plaintiffs have not provided any proof of doing so besides submitting a letter to this Court and supplying the Court with copy of a revised Complaint at oral argument.

Regardless of whether Plaintiffs have or have not withdrawn their original Fourth Amended Complaint, Plaintiffs still violate this Court's January 4, 2006 Order. Plaintiffs' attempt to withdraw the Complaint on the eve of oral argument does not erase their previous violations of this Court's Order. Plaintiffs are attempting to once again avoid the consequences of violating this Court's Order and it will not be tolerated. As such, it is irrelevant whether or not Plaintiffs' withdrew the Fourth Amended Complaint to this Court's decision to hold Plaintiffs in civil contempt. As explained above, Plaintiffs violated this Court's Order and therefore this Court holds them in civil contempt. Accordingly, Plaintiffs must pay the above penalty and reimburse Defendants all costs associated with the Fourt Amended Complaint. Defendants are directed to submit a certification of legal fees and costs associated with Plaintiffs' proposed Fourth Amended Complaint.

III. Conclusion

For the reasons stated, it is the finding of this Court that Defendants' application is **granted**. An appropriate Order accompanies this Opinion.

S/Dennis M. Cavanaugh
Dennis M. Cavanaugh U.S.D.J.

Date: July 10, 2006
Original: Clerk's Office
Cc: All Counsel of Record
The Honorable Mark Falk, U.S.M.J.
File

EXHIBIT D

Case 2:02-cv-05948-DMC Document 131 Filed 07/12/2006 Page 1of 2

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

EILEEN GILGALLON, et al.	:	**Hon. Dennis M Cavanaugh**
Plaintiffs	:	ORDER
v.	:	Civil Action 02-CV-5948
COUNTY OF HUDSON, et al.,	:	(DMC)
Defendant	:	

This matter comes before the Court upon an Order to Show Cause filed by the County of Hudson, Robert Janiszewski, Francis De Leonardis, Mark Morchel, and Michael Cifelli ("Defendants"), for this Court to stay the motions pending before the New Jersey Superior Court and hold Eileen Gilgallon, Ronald Gilgallon and Shawn Gilgallon ("Plaintiffs") in both criminal and civil contempt and civil confinement for violationg this Court's January 4, 2006 Order. Oral argument was heard regarding this matter on June 22, 2006, at 9:30 A.M. For the reasons stated in the Court's Opinion issued on this day,

IT IS on this 10th day of July, 2006,

ORDERED THAT Defendants' application to hold Plaintiffs in civil contempt is **granted;** and it is further

ORDERED that defendants' application to hold Plaintiffs in criminal contempt is **denied;** and it is further

ORDERED THAT Plaintiffs pay this Court a fine of $5000.00; and it is further

ORDERED THAT Defendants submit a certification of services for all counsel fees and costs, individually or severally, associated with Defendants' efforts in response to plaintiffs' Fourth Amended Complaint and a proposed Order;

ORDERED THAT Plaintiffs must reimburse Defendants all costs and fees associated with the Fourth Amended Complaint.

S/Dennis M. Cavanaugh

Dennis M. Cavanaugh, U.S.D.J.

Date: July 10, 2006
Original: Clerk's Office
Cc: All Counsel of Record
The Honorable Mark Falk, U.S.M.J.
File

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

EILEEN GILGALLON, ET AL., : **Hon. Dennis M.Cavanaugh**

Plaintiffs, : **OPINION** 19

V.

THE COUNTY OF HUDSON, et al., : Civil Action No.
(DMC) : 02-CV-5948

Defendants :

DENNIS M. CAVANAUGH, U.S.D.J.:

This matter comes before the Court upon a motion by Eileen Gilgallon, Ronald Gilgallon, and Shawn Gilgallon ("Plaintiffs"), for reconsideration pursuant to Federal Rule of Civil Procedure 59(e). Plaintiffs seek reconsideration of this Court's January 4, 2006 Opinion and Order granting the application filed by the County of Hudson, Robert Janiszewski, Francis DeLeonardis, Mark Morchel, Michael Cifelli, The Board of Chosen Freeholders, Neil Carrol, Vincent Ascolese, Neptalia Cruz, Silverio Vega, Maurice Fitzgibbons, William Braker, Nidia Da Vilacolon, William o'Dea, Albert Cifelli, Connell Foley LLP, John P. Lacey, Labor Management Cincepts Inc., John Monroe, the State of New Jersey, Joseph Trapp, and ABC Corporations and John and Mary Does' (Defendants), enjoining plaintiffs from pursuing this matter in State Court. This motion is decided without oral argument pursuant to Rule 78 of the Federal Rules of Civil Procedure. For the reasons set forth below, Plaintiffs' motion for reconsideration is **denied.**

I. Background

The facts of this matter are described in detail in this Court's January 4, 2006 Opinion and in the interest of judicial economy the facts will not be restated in this Opinion. On January 13, 2006, Plaintiffs filed a motion for reconsideration and now request the Court to reconsider that which it previously decided.

II. Discussion

A. The Standard for Reconsideration

Under Rule 59 of the Federal Rules of Civil Procedure, a plaintiff must satisfy a high standard in order to have a judgment altered or amended. In North River Insurance Co. v. CIGNA Reinsurance Co., 52 F. 3d 1194, 1218 (3d Cir. 1995), the Court stated that a Rule 59 motion for an amended judgment must rely on one of three grounds: (1) an intervening change in controlling law; (2) the availability of new evidence that was previously unavailable; or (3) the need to either correct a clear error of law or prevent a manifest injustice. A motion for reconsideration is regarded as "the functional equivalent of a Rule 59 motion... to alter or amend judgment". Venen v. Sweet, 758 F. 2d 117, 122 (3d Cir. 1985)

B. Local Rule 7.1

Although Rule 59 allows for a judgment to be altered, there is no express provision in the Federal Rules of Civil Procedure for a judicial decision to be reconsidered. United States v. Compaction Sys. Corp., 88 F. Supp. 2d 339, 345 (D.N.J. 1999)

(Hedges, U.S.M.J.). However, in this District, Local Rule 7.1 (g) creates a specific procedure by which a party may, within 10 days of the entry of an order, ask either a District Judge, or a magistrate Judge, to take a second look at any decision "upon showing that dispositive factual matters or controlling decisions of law were overlooked by the Court in reaching its prior decision."
LITE, N.J. FEDERAL PRACTICE RULES, Comment 6 to L. Civ. R. 7.1 (g) (Gann 2002 ed.). Consequently, local Rule 7.1 (g) of the Local Rules of Civil Procedure, rather than Rule 59 of the Federal Rules of Civil Procedure, governs motions for reconsideration filed in the District of New Jersey. Compaction Sys. Corp., 88 F. Supp. 2d at 345.

Relief by way of a motion for reconsideration is an "extraordinary remedy" only be granted "very sparingly". NL Indus. Inc. v. Commercial Union Ins., Co., 935 F. Supp. 513, 516 (D.N.J. 1966); Maldonado v. Lucca, 636 F. Supp. 621, 630 (D.N.J. 1986) (Brotman, U.S.D.J.). Local Rule 7.1 (g) does not contemplate a recapitulation of arguments previously considered by the Court in rendering its decision. Bermingham v. Sony Corp. of Am., Inc., 820 F. Supp. 834, 856 (D.N.J. 1992) (Lechner, U.S.D.J.), aff'd, 37 F.3d 1485 (3d Cir. 1994). Stated more simply, a motion for reconsideration is not an appeal. It is improper for a motion for reconsideration to "ask the Court to rethink what it ha[s] already thought through-rightly or wringly". Oritani Sav. & Loan Ass'n v. Fidelity & Deposit Co., 744 F. Supp. 1311, 1314 (D.N.J. 1990) (Ackerman U.S.D.J.). Rule 7.1(g) permits

reconsideration only when "disposable factual matters or controlling decisions of law" that were previously presented to the court were overlooked. Resorts Int'l v. Great Bay Hotel and Casino, 830 F. Supp. 826, 831 (D.N.J. 1992); Khair v. Campbell Soup, Co., 893 F. Supp 316, 337 (D.N.J. 1995) (Irenas, U.S.D.J.).

C. Plaintiff's Failure to Meet the Standard for Reconsideration

Here, the Plaintiffs' motion fails to show this Court "overlooked" any of the above listed points. Instead, Plaintiffs are improperly using a Rule 59 motion as a vehicle to reargue their claims. An argument is not deemed overlooked because it is not specifically addressed in a court's opinion. Eichorn v. AT&T Corp., No. Civ. A. 96-3587 (MLC), 1999 WL 33471890 (D.N.J. Aug. 23, 1999) (Cooper, U.S.D.J.). An argument may be regarded as having been considered if it is presented to the court in written submissions and in oral argument. Id.

Plaintiffs claim this Court erred in making the determination that Plaintiffs are permanently enjoined from pursuing any of their claims against Defendants arising from the denial of Plaintiffs' security guard contracts with the County of Hudson in the Superior Court of New Jersey. Specifically, Plaintiffs argue this Court erred because: (1) Plaintiffs' Third Amended Complaint had not yet been filed in the Superior Court of New Jersey; and (2) Plaintiffs claim for spoliation of evidence falls outside the re-litigation exception to the anti-injunction act. Both of Plaintiffs' arguments fail on reconsideration.

Plaintiffs' first argument that this matter was not ripe fails because Plaintiffs had filed a motion for leave to file the Third Amended Complaint. Applications to amend pleadings are granted liberally by courts. See Web v. Witt, 379 N.J. Super. 18, 24 (App. Div. 2005). Plaintiffs' act of seeking leave to amend their Third Complaint is their direct attempt to re-litigate that which has previously been decided not only by this Court, but by the Appellate Division of the New Jersey Superior Court, Magistrate Judge Hedges, District Judge Bassler, District Judge Hayden, and the Third Circuit. Plaintiffs have repeatedly wasted this Court's time and that of other Judges. They are now not allowed to further abuse the system in State Court. Finally, Plaintiffs' spoliation claim also fails to meet the above standard. Plaintiffs' Third Amended Complaint does not mention "spoliation" of evidence in regard to Civil action 02-5948, but does discuss it in connection to Mr. Maloney and the original Superior Court matter under HUD-L-4726-95. In this discussion it becomes clear that

Plaintiffs are not making a spoliation of evidence claim, but using this argument in another attempt to re-litigate their many allegations against the Defendants that have all been previously adjudicated. In addition, even if Plaintiffs did have a valid spoliation of evidence claim, New Jersey does not recognize a separate tort for the spoliation of evidence. See Jerista v. Murray, 185 N.J. 175, 201-02 (2005). For all of these reasons, Plaintiffs' motion for reconsideration must be dismissed.

EXHIBIT E

Case 2:02-cv-05948-DMC Document 101 Filed 02/28/2006 Page 1of 1

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

EILEEN GILGALLON, et al.	**: Hon. Dennis M. Cavanaugh**
Plaintiffs	**: ORDER**
v.	: Civil Action No. 02- CV-5948
COUNTY OF HUDSON, et al.,	: (D.M.C.)
Defendants.	:

This matter coming before the Court upon a motion for reconsideration filed by Eileen Gilgallon, Ronald Gilgallon and Shawn Gilgallon's ("Plaintiffs"), pursuant to Federal Rule of Civil Procedure 59(e). This motion is decided without oral argument pursuant to Rule 78 of the Federal Rules of Civil Procedure. For the reasons set forth in the opinion issued today,

IT IS on this 23rd day of February, 2006,

ORDERED THAT Plaintiffs' motion for reconsideration is **denied.**

S/Dennis M. Cavanaugh

Dennis M. Cavanaugh, U.S.D.J.

Date: February 23, 2006

Original: Clerk's Office

Cc. The Honorable Mark Falk, U.S.M.J.

File

III. Conclusion

Plaintiffs have not met the high standard required to achieve success on a motion for reconsideration. For the reasons stated in this Opinion, Plaintiffs' motion for reconsideration is **denied.** An appropriate Order accompanies this Opinion.

S/Dennis M. Cavanaugh
Dennis M. Cavanaugh,

U.S.D.J.
Date: February 23, 2006
Original: Clerk's Office
Cc.: The Honorable Mark Falk, U.S.M.J.

Case 2:02-cv-05948-DMC Document 93
Filed 01/04/2006 Page 1 of 8
NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

EILEEN GILGALLON, et al.,	:	**Hon. Dennis M.**
	:	**Cavanaugh**
Plaintiffs,	:	**OPINION**
v.	:	
COUNTY OF HUDSON, et al.,	:	Civil Action
	:	No.02-CV-5948
Defendants		(DMC)

DENNIS M. CAVANAUGH, U.S.D.J.:

This matter comes before the Court upon an 26

Order to Show Cause filed by the County of Hudson, Robert Janiszewski, Francis De Leonardis, Mark Morchel, Michael Cifelli, the Board of Chosen Freeholders, Neil Carroll, Vincent Ascolese, Neptalia Cruz, William Braker, Nidia DaVilacolon, William O'Dea, Albert Cifelli, Silverio Vega, Maurice Fitzgibbons, Connell Foley LLP, John P. Lacey, Labor Management Concepts Incorporated, John Monroe, the State of New Jersey, Joseph Trapp, and ABC Corporations and John and Mary Does("Defendants"), requesting this Court to enjoin Eileen, Ronald and Shawn Gilgallon's ("Plaintiffs") pending action in the Superior Court of New Jersey, Law Division, Hudson County Vicinage, docket number HUD-L-4228-03. Oral argument was heard regarding this matter on November 28, 2005. For the reasons set forth below, this Court **grants** Defendants' application enjoining Plaintiffs from pursuing this matter in State Court.

I. Background

The issue before this Court is related to a conflict that arose regarding the bidding in Hudson County for public contracts with security guard services in 1995 and 1996. (Defendants' Brief in Support of the Order to Show Cause ("Def. Br.") at 1). On or about July 1994, Defendant Hudson County issued a notice to bidders for a one year contract to provide security services at various facilities located within the County. (Id.) Plaintiffs had formed a corporation, Consec Security Services ("CSS"), that submitted the lowest bid. (Id.) Hudson County rejected this bid on the basis of "non-responsibility" after learning Mr. Ronald Gilgallon,

the former principal of CSS, was a convicted felon. (Id.) Plaintiffs then filed an Order to Show Cause in the Superior Court of New Jersey, Hudson County, Docket No. HUD-L-4228-03, seeking an injunction preventing Defendants from awarding the contract to another bidder. This was denied. (Id.) Since that time, Plaintiffs have filed various complaints and motions in both Federal and State Courts. This Court previously discussed the facts of this case in its earlier June 2, 2003 Opinion, wherein it was determined that the Appellate Division of New JerseySuperior Court, District Judge Bassler, Magistrate Judge Hedges, and District Judge Hayden had disposed of Plaintiffs' claims and entered sanctions against the Gilgallons for their vexatious filings and abuse of the judiciary pursuant to Rule 11 of the Federal Rules of Civil Procedure. (See, Hon. Dennis M. Cavanaugh's Order and Opinion dated June 2, 2003). Plaintiffs appealed this decision and the Third Circuit affirmed my decision on April 14, 2004. In an effort to avoid unnecessarily expending this Court's judicial resources, and in the interest of judicial efficiency and economy, this Court will not recite the facts that occurred prior to the June 2, 2003 Opinion.

Plaintiffs continued to litigate this matter despite this Court's ruling. Plaintiffs filed a second action in the Superior Court of New Jersey, Law Division, Hudson County, on August 1, 2003, alleging their former counsel committed mal practice regarding their first formal complaint, (See, complaint date 8/1/03). On May 26, 2004, Plaintiffs filed a second amended complaint naming

Hudson County Attorney Michael Dermody, who had been opposing counsel in the first Federal Action, as a Defendant, alleging he conspired with their former counsel to deprive Plaintiffs of their ability to litigate their Federal Claims. (See, Second Amended Complaint dated May 26, 2005). Judge Bassler found it necessary to enter an injunction against Plaintiffs from pursuing this matter against Defendant Dermody in State Court in order to protect and effectuate the District Court's Judgment in the First Federal Court Action. Judge Bassler also prohibited Plaintiffs from filing any future complaints against Mr. Dermody in any State or Federal Court for claims arising out of the Hudson County's Decision to award the securities contract to Labor Management Concepts ("LMC"). Plaintiffs appealed Judge Bassler's decision and the Third Circuit affirmed his decision on November 3, 2005.

Plaintiffs then filed a third Amended Complaint in the Superior Court of New Jersey on October 17, 2005. The Complaint names Plaintiffss counsel R.C. Shea & Associates, Shea and Novy P.C., Robert Shea, Stacie Brustman, the County of Hudson, and Darren Maloney as Defendants. Plaintiffs did not name the various members of LMC and the Board of Chosen Freeholders, Robert Janiszewski, Francis DeLeonardis ,Mark Morchel, Michael Cifelli, Neil Carrol, Vincent Ascolese, Neptalia Cruz, William Braker, Nidia DaVila Colon, Albert Cifelli, Silverio Vega, and Maurice Fitzgibbons as Defendants. However, all of these Defendants now seek an injunction against Plaintiffs enjoining them from proceeding against

them any further in State Court.

I. DISCUSSION

A. Standard

The Anti-Injunction Act("Act") provides "a court of the United States may not grant an injunction to stay proceedings in a state court except as expressly authorized by an Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments". 28 U.S.C.A. &2283. The Act "is an absolute prohibition against enjoining state court proceedings,unless the injunction falls within one of three specifically defined exceptions". Atlantic Coast Line R.R. Co. v. Brotherhood of Locomotive Engineers, 398 U.S. 281, 286, (1970). Consequently, "any injunction against State Court proceedings otherwise proper under general equitable principles must be based on one of the specific statutory exceptions to & 2283, if it is to be upheld". Id. At 287. Pursuant to 28 U.S.C.A & 2283, a District Court may only grant an injunction to stay State Court proceedings if (1) expressly authorized by an Act of Congress; (2) where it is necessary to aid its jurisdiction; and (3) to protect or effectuate its judgments. These "exceptions are narrow and are not to be enlarged by loose statutory construction". Chick Kam Choo v. Exxon Corp., 486 U.S. 140, 146, (1988).

The third exception is known as the "relitigation exception". National R.R. Passenger Corp. v. Pa. R.R. Pub. Util. Comm'n, 342 F.3d 242, 255 (3d Cir. 2003). The relitigation exception was designed to allow Federal Courts to prevent State Courts from

deciding an issue previously litigated in Federal Court. Chick Kam Choo, 486 U.S. at 147. This exception is " founded in the well recognized concepts of res judicata and collateral estoppel". Id; In re Prudential Ins. Co. Sales Practice Litig.: Lowe, 261F.3d 355, 364 (3d Cir. 2001). The relitigation exception may only be used when the Federal injunction pertains to an issue already litigated and decided in Federal Court. Id. At 148.

B. The Relitigation Exception in Regard to Named Defendants

The relitigation applies in this matter to Defendants Maloney and Hudson County. Plaintiffs have now filed a Third Amended Complaint in the Superior Court of New Jersey against their attorneys, the County of Hudson, and Darren Maloney. Plaintiffs allege their attorneys committed malpractice durinf the early stages of this litigation. (See, Plaintiffs Third Amended Complaint). Plaintiffs claim the relitigation exception does not apply to defendants Maloney and Hudson County because the joining of these parties is necessary to prove their "suit within a suit" in relation to their attorney malpractice claims. (Plaintiffs' Letter Brief in Oppositiin to Defendants' Order to Show Cause received December 7, 2005 ("Pl. Br.") at 3).

Plaintiffs "suit within a suit" argument does not apply to Defendants' Maloney and Hudson County. Although attorney malpractice claims are generally exempt from the entire controversy doctrine, proving a "suit within a suit" does not allow a plaintiff to re-name a defendant already dismissed

from the underlying action. Connell Foley v. Israel Travel, 377 N.J. Super. 350 (App. Div. 2005). Plaintiffs' Third Amended Complaint does more than establish a case for malpractice, it restates prior claims against Defendants Maloney and Hudson County previously decided by this Court. Among other things, it again raises the issues of of the alleged ultra vires payments made by the County to Labor Management Concepts ("LMC"). (Plaintiffs Third Amended Complaint at 41). This allegation was previously dismissed by this Court and the relitigation exception prevents Plaintiffs from pursuing it again in State Court.

Furthermore, Plaintiffs ask the Superior Court to award them damages "resulting from the dismissal of their claims in civil action 00-591 and 02-5948," and to award damages for "any and all damages that may have resulted from the prior litigations in civil action 00-591 and 02-5948," and damages for "punitive, compensatory and nominal damages, interes, related costs and personal financial loss relating to this case." (Plaintiffs' Third Amended Complaint at 75). Plaintiffs could have received this relief if this Court had not previously dismissed their claims. Under the relitigation exception Plaintiffs are free to argue malpractice claims against their attorneys, but they may not reargue claims and request damages already denied by this Court and other District Courts. For these reasons, the relitigation exception applies to Plaintiffs' claims against Defendants Maloney and Hudson County. Therefore, this Court grants Defendants' application and issues an injunction enjoining

Plaintiffs' pending action against Defendants Maloney and Hudson County in New Jersey State Court.

C.The Relitigation Exception and Unnamed Defendants in Plaintiffs Third Amended Complaint.

Defendants also seek an injunction enjoining Plaintiffs from pursuing this matter in State Court against Defendants Robert Janiszewski, Francis DeLeonardis, Mark Morchel, Michael Cifelli, the Board of Chosen Freeholders, Neil Carrol, Vincent Ascolese, Neptalia Cruz, William Braker, Nidia DaVila-Colon, William O'Dea, Albert Cifelli, Silverio Vega, Maurice Fitzgibbons, Connell Folc LLP, John P. Lacey, Labor Management Concepts Incorporated, John Monroe, the State of New Jersey, Joseph Trapp, and ABC Corporations and John and Mary Does'("Defendants"), which were not named on the face of Plaintiffs Third Amended Complaint. Although it may first appear premature for this Court to grant an injunction enjoining Plaintiffs from pursuing an action against Defendants that are not named in their complaint, these Defendants are named and referred to throughout the body of the Complaint.

The Board of Freeholders and LMC is mentioned throughout the Plaintiffs Complaint. (See, Plaintiffs Third Amended Complaint). For example, on page thirty-three of Plaintiffs' Complaint it states "Robert Janiszewski and the County were well aware that a settlement between LMC and the County was never executed." On page thirty-six of the Complaint Plaintiffs again reference the alleged

"embezzlement scheme" between the County of Hudson and LMC. Plaintiffs repeatedly mention (1) alleged corruption and collusion of County officials leading to ultra-viries payments to LMC; (2) alleged conspiracy by County officials to settle Hudson County's claims against LMC through illegal actions; (3) that the settlement between LMC and Hudson County is invalid; and the Defendants committed fraud Court during the litigation of their prior Federal Complaint before this Court. Judges of this Court have already addressed and dismissed all of these claims against all of the parties. Therefore the relitigation exception applies to plaintiffs' current state action against the above named Defendants.

This Court refuses to place form over substance and allow Plaintiffs to raise issues against Defendants in State Court that were already decided in Federal Court, simply because Plaintiffs did not name all of the Defendants in their Complaint. For these reasons, this Court grants Defendants' application and issues an injunction enjoining Plaintiffs from pursuing this matter against any of the parties named in the Order to Show Cause in State Court or any other Court.

II. CONCLUSION

For the reasons stated, it is the finding of this Court that Defendants' application is **granted.** An appropriate Order accompanies this Opinion.

S/Dennis M Cavanaugh
Dennis M. Cavanaugh, U.S.D.J.

Date: January 4, 2006
Original: Clerk's Office
Cc. All Counsel of Record
The Honorable Mark Falk, U.S.M.J.
File

EXHIBIT F

Case 2:02-cv-05948-DMC Document 94
Filed 01/04/2006
NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

EILEEN GILGALLON, et al., : Hon. Dennis M.

Plaintiffs : Cavanaugh
: ORDER

v.

COUNTY OF HUDSON et al., : Civil Action No.

02-CV-5948

Defendant :(DMC)

This matter coming before the Court upon an Order to Show Cause filed by the County of Hudson, Robert Janiszewski, Francis DeLeonardis, Mark Morchel, Michael Cifelli, the Board of Chosen Freeholders, Neil Carrol, Vincent Ascolese, Neptalia Cruz, William Braker, Nidia DaVila-Colon, William O'Dea, Albert Cifelli, Silverio Vega, Maurice Fitzgibbons, Connell Foley LLP, John P. Lacey, Labor Management Concepts Inc., John Monroe, the State of New Jersey, Joseph Trapp, and ABC Corporations and John and Mary Does ("Defendants"), requesting this Court to

enjoin Eileen, Ronald and Shawn Gilgallon's ("Plaintiffs") pending action in the Superior Court of New Jersey, Law Division, Hudson County Vicinage, Docket No. HUD-L-4228-03. Oral argument was heard regarding this matter on November 28, 2005. For the reasons set forth in the Opinion issued today,

IT IS on this fourth day of January 2006,

ORDERED that Defendants' application is **granted;**

IT IS FURTHER ORDERED that an injunction is issued enjoining plaintiffs from pursuing this matter against any of the above named Defendants in State Court or any other Court.

S/Dennis M. Cavanaugh

Dennis M. Cavanaugh, U.S.D.J.

Date: January 4, 2006
Original: Clerk's Office
Cc. All Counsel of Record
The Honorable Mark Falk, U.S.M.J.
File

EXF

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

EILEEN GILGALLON, RONALD GILGALLON And MARY HENNIG, as taxpayers in Hudson County, New Jersey Plaintiffs	00-CV-591 (WGB)

v.

BOARD OF CHOSEN FREEHOLDERS FOR COUNTY OF HUDSON; NEIL CARROL; VINCENT ASCOLESE; NEPTALIA CRUZ WILLIAM BRAKER; NIDIA DAVILA-COLON; WILLIAM O'DEA; ALBERT CIFELLI; SILVERIO VEGA; MAURICE FITZGIBBONS; EDWARD G. FLORIO LMC, INC; & ABC CORPORATIONS AND JOHN AND MARY DOES 1-10 (fictitious persons)

Defendants

OPINION

Appearances
Robert C. Shea, Esq.
Stacie Brustman, Esq.
Shea & Novy
244 main Street
CN 2627
Toms River, N.J. 08754-2627

Attorneys for Plaintiffs
John P Lacey, Esq.
Connell Foley LLP
85 Livingston Ave.
Roseland, N.J. 07068

Attorneys for Defendant Labor Management Concepts, Inc.
Michael L Dermody
First Assistant County Counsel
Office of the Hudson County Counsel
Administration Building Annex
567 Pavonia Ave.
Jersey City, N.J. 07306

Attorneys for Defendants Board of Chosen Freeholders for the County of Hudson:
Neil Carrol, Vincent Ascolese, Neptalia Cruz, Nidia Da Vila-Colon, William O'Dea, Albert Cifelli, Silverio Vega, Maurice Fitzgibbons, and Edward J. Florio

BASSLER, DISTRICT JUDGE:

Defendants Labor management Concepts, Inc. ("LMC") and Defendants Board of Chosen Freeholders for the County of Hudson, ("Board"), Neil Carrol, Vincent Ascolese, Neptalia Croz, Nidia DaVila-Colon, William O'Dea, Albert Cifelli, Silverio Vega, Maurice Fitzgibbons, and Edward J. Florio (collectively "Defendants"), move to dismiss for failure to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12(b) (6). Defendants' motion to dismiss is **granted.**

LMC also seeks sanctions against Plaintiffs pursuant to Fed. R. Civ. P. 11. Rule 11 requires that a motion for sanctions be made separately from other motions or requests. Because LMC has not made a separate application for sanctions, that request is **denied without prejudice.**

Because Plaintiffs complaint alleges, among other

things, a violation of the **Racketeer Influence** and Corrupt Organizations Act ("RICO"), 18 U.S.C. & 1964, the Court has jurisdiction over this matter pursuant to 28 U.S.C. & 1331.

I. BACKGROUND

A. State Court Proceedings

Plaintiff Eileen Gilgallon ("Eileen") is the President and ownerof CFS Services, Inc. ("CFS"), a licensed private detective agency. She is married to Plaintiff Ronald Gilgallon ("Ronald").

In 1995 and in 1996, several companies, including CFS and LMC, submitted bids to Hudson County ("the County") to provide security services at many of Hudson County's public buildings, including the County Prosecutor's Office and Meadowview Hospital. LMC contends that due to the sensitive nature of the work and the contents of those buildings, the winning bidder needed to have moral integrity. CFS was the lowest bidder; however, CFS was disqualified by the County based on its suspected ties to Ronald, who had been convicted of insurance fraud. Thereafter, LMC was deemed the lowest responsible bidder in both 1995 and 1996.

CFS denied that it had any connection to Ronald and sued the County and LMC in State Court, CFS Services, Inc. v. Board of Chosen Freeholders and Labor Management Concepts, Inc., HUD Law Docket No. 4726-95, seeking to obtain the bids. The County filed a cross-claim against LMC to recover the cost of unauthorized telephone charges that were incurred at a location where LMC provided security services.

On December 22, 1997, at a regular meeting of the Board of Chosen Freeholders, the Board passed a Resolution authorizing Hudson County's Counsel to accept
$30,000 from LMC to settle "any and all cross-claims" between the Hudson County Board of Chosen Freeholders and LMC, "including the cost of the unauthorized telephone calls". (Board Resolution attached to LMC's Mot. To Dismiss theComplaint ("LMC's Mot.") as Ex F. (emphasis added).

Pursuant to the Board's Resolution, on December 26, 1997, the County and LMC entered into a Settlement Agreement and Release ("Settlement Agreement") that resolved all claims between them. (Settlement Agreement attached to LMC's Mot. As Ex. A.) The parties also executed a Stipulation of Dismissal With Prejudice. (Ex. A. attached to LMC's Mot.)

As for the suit between CFS and LMC, the Law Division Judge ordered that the County conduct a hearing to determine whether CFS was a responsible bidder and therefore eligible to bid on the 1995 and 1996 contracts. After ten days of testimony, the hearing officer issued his findings and his recommendation to the Board; the hearing officer found that CFS was not a responsible bidder for either the 1995 or 1996 contract because of Ronald's continued involvement with CFS. Subsequently, the Board adopted the hearing officer's findings and retroactively awarded both the 1995 and 1996 contracts to LMC.

After reviewing the transcripts of the

responsibility hearing, the Law Division upheld the County's decision. Further, the Court denied CFS's motion to amend its complaint to allow Plaintiff or a taxpayer of Hudson County to sue LMC to recover on behalf of the County money allegedly owed as a result of unauthorized telephone charges and alleged supervisory personnel overpayments. (See CFS Services, Inc. v. The Board of Chosen Freeholders of the County of Hudson and Labor Management Concepts, Inc., A-2646-97T5 (App. Div. May 20, 1999) at 6, attached to LMC's Mot. As Ex. B.)

The New Jersey Appellate Division affirmed the lower court and agreed that there was sufficient credible evidence in the record to support the finding that CFS was not a responsible bidder. The appellate court also affirmed the validity of the Settlement Agreement and held that the trial court did not err in denying leave to amend the complaint "to assert taxpayer claims through Eileen Gilgallon against LMC for excessive managerial and telephone costs under other contracts with the County of Hudson." (Id. At 9.)

B. Federal Court Proceeding

On February 4, 2000, Plaintiffs filed an eight count Complaint before this Court alleging that LMC intentionally violated its contract with the County by: (1) using the County telephones without authorization; (2) failing to provide staff required under the contract and improperly submitting requests for payment when the required staff were not on site; and (3) being paid ultra vires without an appropriately executed contract for services rendered beginning in July 1995 to date.

Defendants move to dismiss the Complaint contending that because the County settled all claims that it had against LMC, Plaintiffs are precluded from raising anew those issues that were the subject of the Settlement Agreement. Additionally, Defendants maintain that Plaintiffs do not have legal standing to bring a taxpayer suit on behalf of the County. Finally, Defendants seek dismissal of this suit on the grounds that certain of the criminal statutes cited by Plaintiffs in their Complaint do not provide for a cause of action for a civil remedy and that the RICO allegation has not been pled with the requisite particularly.

II. Discussion

A. Standard for Motion to Dismiss

Federal Rule of Civil Procedure 12(b) (6) allows a party to move for a dismissal based upon the pleader's "failure to state a claim upon which relief can be granted". Since the long-established federal policy of civil litigation is to decide cases on the proofs, district courts generally disfavor Rule 12(b) (6) motions. Melo-Sonics Corp. v. Cropp, 342 F. 2d 856 (3d Cir. 1965); Panek v. Boqucz, 718 F. Supp. 1228, 1229 (D.N.J. 1989).In deciding a motion to dismiss for failure to state a claim, all allegations in the pleadings must be accepted as true and the plaintiff must be given the benefit of every favorable inference that can be drawn from those allegations. See, Conley v. Gibson, 355 U.S. 41, 48 (1957); Wisniewski v. Johns-Manville Corp., 812 F. 2d 81, 83 n. 1 (3d Cir. 1987); Markowitz, 906 F. 2d at 103. "All the rules require is a short and plain

statement of the claim that gives the defendant fair notice of the plaintiff's claim and the grounds upon which it rests." Conley, 355 U.S. at 47.

Rule 12(b) (6) does not countenance "dismissals based on a judge's disbelief of a complaint's factual allegations". Neitzke v. Williams, 490 U.S. 319, 326-27 (1989). "The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." Scheur v. Rhodes, 416 U.S. 232, 236 (1974).

Accepting the facts in the pleadings as true and giving them all reasonable inferences, a court must dismiss under 12(b)(6) "[i]f as a matter of law it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Neitzke, 490 U.S. at 327-27.

B. Settlement Agreement

Defendants argue that because Hudson County settled all its claims that it had brought or could have brought against LMC for $30,000.00, Plaintiffs cannot seek to step into the County's shoes and undo the very Settlement Agreement and Release and Stipulation of Dismissal With Prejudice that the County itself entered into. In response, Plaintiffs suggested that the Stipulation of Dismissal was fraudulent because the three existing Stipulations exhibit different filing dates. Defendants contend, however, that the original Stipulation of Dismissal was filed on December 26, 1997, as indicated on one of the copies of the Stipulation. Ex. O attached to Pl's Brief in Opp'n to Def's Notice of Mot. To Dismiss ("Pl.'s Opp'n Br."). Another copy has December 26, 1999

stamped on it. Ex. M attached to Pl.'s Opp'n Br. It appears that the last numeral "9" may mistakenly have been manually altered, possibly when the document was copied. The final copy of the Stipulation does not evidence a legible date stamp. Ex. N attached to Pl.'s Opp'n Br. Plaintiffs' theory of fraud on this basis is meritless

Next, Plaintiffs claim that the Settlement Agreement covers more than the scope of the discussion by the Board at its December 22, 1997 meeting. In other words, Plaintiffs believe that the Board had not been presented with, and was unaware of facts pertaining to the allegations of bill padding and ultra vires payments, and therefore, the Board had only agreed to settle the then existing cross-claim, that is, the limited issue of LMC's unauthorized use of County telephones.

Plaintiffs' contention is without merit. According to the express terms of the Settlement Agreement, the Board intended to, and did in fact, release the then existing claims as well as claims that could have been brought against LMC. The Settlement Agreement expressly states that the County has conducted an extensive investigation of CFS's allegations against LMC:

(b) [t]hat [LMC] had not been fully authorized by Freeholder Resolution to perform security Guard services during the period July 1995 through
The present and was thus not entitled to payment
during that period;

(c) [t]hat [LMC] had applied for, and obtained, payments for more security guard service that had

actually been worked.

Settlement Agreement, at II 2. Other than evidence that telephone calls had been made from Meadowview Hospital and charged to the County, the County found no evidence of any wrongdoing by LMC. Id. T II 3.

Moreover, the Settlement Agreement reflects the parties' desire to "settle this matter once and for all". (Id. At II 5.) It states that LMC agrees to pay, and Hudson County agrees to accept, $30,000.00 "in full and final settlement of all claims and counterclaims that Hudson County has filed, or could have filed against Labor Management Concepts, Inc. based on conduct that occurred prior to the date of this Settlement Agreement." (Id. (emphasis added)). More specifically, the Agreement provides that the County agrees to release LMC "from any and all other claims that the County might have against Labor Management Concepts, Inc. arising out of security guard services provided by Labor Management Concepts, Inc. during the period January 1, 1994 through the present." (Id. At II 7 (emphasis added)).

The Settlement Agreement was determined to be valid by the New Jersey Appellate Division. In affirming the decision of the lower court not to permit Plaintiffs to amend their complaint, the appeals court noted:

A taxpayer action against a local government is

appropriate when there are claims of fraud or corruption, illegal bidding procedures or other instances of illegalities and ultra vires acts, including:

Ultra vires expenditures. Loigman v. Township Comm. Of Middletown, 297 N.J. Super. 287, 295-96 (App. Div. 1997).

In this instance the County did pursue claims against LMC similar to those sought to be asserted by Eileen Gilgallon as taxpayer and entered into a settlement providing for payment of LMC in the amount of $30,000.00. A local government acting lawfully and in good faith may compromise, adjust and settle claims against it in the same manner as a natural person, and the resulting settlement will have conclusive effect on other parties. Edelstein v. City of Asbury Park, 51 N.J. Super. 368, 389-90 (App. Div. 1958). We concur with the conclusion of [the Law Division judge] that plaintiff did not show that the County acted illegally or beyond its authority in agreeing to settle matters with LMC and that there was no substantial reason presented to undermine the presumption of the validity of the settlement.

CFS Services, Inc., A-2646-97T5, at 9.

Further, as evidenced by the discussion that occurred at the December 22, 1997 Board meeting, the County clearly had knowledge of, and had considered not only the allegation of unauthorized telephone calls, but also these other claims against LMC that Plaintiffs now raise. At the meeting, Eileen and her son Shawn, advised the Board of their suspicions that LMC had stolen over $250,000 from the

County. See Board meeting notes, attached to LMC's Mot. As Ex. E. They also spoke to the Board of LMC's "illegal bidding," and "criminal theft, collusion, conspiracy." Id. Consequently, Eileen and her son questioned why, in the face of such wrongdoing, the Board would consider settling the County's claims against LMC for only $30,000. (Id.). Despite such accusations of LMC, the Board passed the Resolution authorizing settlement of "any and all
cross-claims" between the Hudson County Board of Chosen Freeholders and LMC, including the cost of the unauthorized telephone bills." Board Resolution attached to LMC's Mot. As EX. F. (emphasis added). Accepting the facts in the pleadings as true and giving them all reasonable inferences, because the County settled and released all claims it had brought or could have brought against LMC, Plaintiffs are precluded from pursuing those claims as taxpayers on behalf of the County. Accordingly, the Court need not address Defendants' alternate grounds for dismissal.

III CONCLUSION

For the reasons noted above, Defendants' motion to dismiss is **granted.** Plaintiffs' Complaint is **dismissed.**

William G. Bassler,

U.S.D.J.

Dated: January 31, 2001

EXHIBIT G

Case 2:00-cv-00591-WGB Document 146
Filed 208/2005

EILEEN GILGALLON, et al., Plaintiffs,		Civ. No. 00-591 (WGB)
		ORDER
BOARD OF CHOSEN FREEHOLDERS FOR THE COUNTY OF HUDSON, et, al., Defendants.		

This matter having come before the Court on the motion of MICHAEL L. DERMODY ("Dermody") for a permanent injunction pursuant to 28 U.S.C. & 2283 (the "Anti-Injunction Act") prohibiting Eileen Gilgallon, Ronald Gilgallon, and Mary Hennig ("Plaintiffs") from pursuing further proceedings against him in New Jersey Superior Court under docket number HUD-L-4228-03; and for sanctions pursuant to Fed. R. Civ. P. 11; and

The Court having considered the submissions of the parties;

And

The Court having heard oral argument on January 24, 2005; and

For the reasons set fort in the Opinion issued this day;

And For good cause shown;

It is this 7th day of February 2005 ORDERED that Dermody's motion for a permanent injunction is hereby **granted.** Plaintiffs Ronald Gilgallon, Eileen Gilgallon, Mary Hennig and their agents are enjoined and restrained from prosecuting the action against Michael Dermody under docket number HUD-L 4228-03 in New Jersey State Court. In addition, Plaintiffs and their agents may not file a future complaint against Michael Dermody in any state or federal court for claims arising out of Hudson County's awarding of securities services contracts to LMC or out of the litigation concerning those contracts unless prior written approval is granted by this Court.

Dermody's motion for Rule 11 sanctions is **denied.**

/s/ WILLIAM G. BASSLER
United States District Judge